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# HOUSE BILL No. 1268

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 31-34; IC 35-33-8-3.4; IC 35-38-2-2.4.

**Synopsis:** Presumption concerning child sexual abuse. Establishes a presumption in favor of entering a no contact order: (1) in a child in need of services proceeding; (2) as a condition of bond; or (3) as a condition of probation; for the benefit of each child who resides with a person who commits a sex offense.

**Effective:** July 1, 2003.

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January 13, 2003, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1268

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 31-34-2-2 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) A law  
3       enforcement officer may take a person into custody if the law  
4       enforcement officer has probable cause to believe that the person is the  
5       alleged perpetrator of an act against a child who the law enforcement  
6       officer believes to be a child in need of services as a result of the  
7       alleged perpetrator's act. The law enforcement officer may take the  
8       alleged perpetrator into custody under this section only for the purpose  
9       of removing the alleged perpetrator from the residence where the child  
10      believed to be in need of services resides.

11      (b) The law enforcement officer shall immediately contact the  
12      attorney for the county department or another authorized person for the  
13      purpose of initiating a ~~protective~~ **no contact** order under ~~IC 31-34-17~~  
14      **IC 31-34-25** that will require the alleged perpetrator to refrain from  
15      having direct or indirect contact with the child.

16      SECTION 2. IC 31-34-25-3.5 IS ADDED TO THE INDIANA  
17      CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2003]: **Sec. 3.5. (a) A court shall enter a no contact order for the benefit of any child who resides with a person who poses a substantial risk of committing acts of sexual abuse against a child.**

**(b) If a no contact order is issued under section 3 of this chapter for the benefit of a child in need of services under IC 31-34-1-3, it is presumed that the person who committed the offense under IC 31-34-1-3 poses a substantial risk of committing acts of sexual abuse against a child who resides with the person. The presumption may not be rebutted unless the person can preliminarily establish that the person:**

- (1) committed the sex offense against a female child and all children who reside with the person are male;**
- (2) will not have unsupervised access with the children who reside with the person; or**
- (3) after the commission of the sex offense under IC 31-34-1-3, has successfully completed treatment or therapy for pedophilia or sexual dysfunction and has not engaged in any sexually inappropriate conduct since the completion of the treatment or therapy.**

**If the person preliminarily establishes the existence of a condition under subdivision (1), (2), or (3), the person has a right to a hearing at which the person may attempt to rebut the presumption.**

**(c) A person against whom a no contact order is sought under this section may not preliminarily establish that the person will not have unsupervised access with other children who reside with the person under subsection (b)(2) unless the court first approves the:**

- (1) plan to prevent unsupervised access to the children; and**
- (2) person who will prevent unsupervised access to the children.**

**The person described in subdivision (2) may not be a parent (as defined in IC 20-10.1-1-9) of the children or an individual who is or was in a sexual relationship with the person.**

**(d) The petition must be entitled "In the Matter of a No Contact Order for \_\_\_\_\_". The petition must:**

- (1) provide the name, age, and gender of the child who resides with the person; and**
- (2) allege the person poses a substantial risk of committing acts of sexual abuse against the child who resides with the person.**

**SECTION 3. IC 35-33-8-3.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**

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1, 2003]: Sec. 3.4. (a) A court shall enter a no contact order as a condition of pretrial release for the benefit of any child who resides with a person who poses a substantial risk of committing acts of sexual abuse against the child.

(b) If a no contact order is issued as a condition of pretrial release for the benefit of a child who is the victim of an offense under IC 31-34-1-3, it is presumed that the person who committed the offense under IC 31-34-1-3 poses a substantial risk of committing acts of sexual abuse against a child who resides with the person. The presumption may not be rebutted unless the person can preliminarily establish that the person:

- (1) committed the sex offense against a female child and all children who reside with the person are male;
- (2) will not have unsupervised access with a child who resides with the person; or
- (3) after the commission of the alleged sex offense under IC 31-34-1-3, has successfully completed treatment or therapy for pedophilia or sexual dysfunction and has not engaged in any sexually inappropriate conduct since the completion of the treatment or therapy.

If the person preliminarily establishes the existence of a condition under subdivision (1), (2), or (3), the person has a right to a hearing at which the person may attempt to rebut the presumption.

(c) A person against whom a no contact order is sought under this section may not preliminarily establish that the person will not have unsupervised access with other children who reside with the person under subsection (b)(2) unless the court first approves the:

- (1) plan to prevent unsupervised access to the children; and
- (2) person who will prevent unsupervised access to the children.

The person described in subdivision (2) may not be a parent (as defined in IC 20-10.1-1-9) of the children or an individual who is or was in a sexual relationship with the person.

SECTION 4. IC 35-38-2-2.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2.4. (a) A court shall enter a no contact order as a condition of probation for the benefit of any child who resides with a person who poses a substantial risk of committing acts of sexual abuse against the children.

(b) If a no contact order is issued as a condition of probation for the benefit of a child who is the victim of an offense under IC 31-34-1-3, it is presumed that the person who committed the

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1 offense under IC 31-34-1-3 poses a substantial risk of committing  
 2 acts of sexual abuse against a child who resides with the person.  
 3 The presumption may not be rebutted unless the person can  
 4 preliminarily establish that the person:

5 (1) committed the sex offense against a female child and all  
 6 children who reside with the person are male;

7 (2) will not have unsupervised access with the children who  
 8 reside with the person; or

9 (3) after the commission of the sex offense under IC 31-34-1-3,  
 10 has successfully completed treatment or therapy for  
 11 pedophilia or sexual dysfunction and has not engaged in any  
 12 sexually inappropriate conduct since the completion of the  
 13 treatment or therapy.

14 If the person preliminarily establishes the existence of a condition  
 15 under subdivision (1), (2), or (3), the person has a right to a hearing  
 16 at which the person may attempt to rebut the presumption.

17 (c) A person against whom a no contact order is sought under  
 18 this section may not preliminarily establish that the person will not  
 19 have unsupervised access with other children who reside with the  
 20 person under subsection (b)(2) unless the court first approves the:

21 (1) plan to prevent unsupervised access to the children; and

22 (2) person who will prevent unsupervised access to the  
 23 children.

24 The person described in subdivision (2) may not be a parent (as  
 25 defined in IC 20-10.1-1-9) of the children or an individual who is or  
 26 was in a sexual relationship with the person.

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